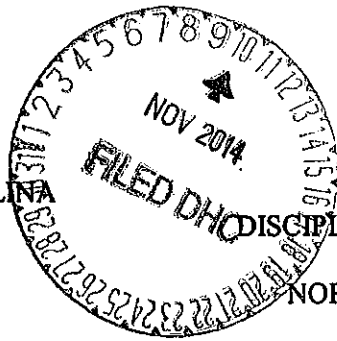


STATE OF NORTH CAROLINA
WAKE COUNTY



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
14 DHC 30

THE NORTH CAROLINA STATE BAR,

Plaintiff

v.

DAVID A. KIRKBRIDE, Attorney,

Defendant

ANSWER

Defendant, David A. Kirkbride, answers the Complaint of the Plaintiff as follows:

1. The allegations contained in paragraph 1 are admitted.
2. The allegations contained in paragraph 2 are admitted.
3. The allegations contained in paragraph 3 are admitted.
4. The allegations contained in paragraph 4 are admitted.
5. The allegations contained in paragraph 5 are admitted in part. It is admitted that for at least part of the time Mr. Kirkbride was engaged in the private practice of law, he maintained one or both of the two trust accounts with North Bank with the account numbers ending in digits 4880 ["Trust 1"] and 2358 ["Trust 2"]. Any remaining allegations or inferences contained in paragraph 5 are denied.
6. The allegations contained in paragraph 6 are admitted in part. It is admitted that when Mr. Kirkbride actively practiced law, he totaled and reconciled the individual client

ledger balances for each trust account with the general ledger and the adjusted bank statement balances for each trust account on at least a quarterly and generally on a monthly basis. After Mr. Kirkbride stopped actively practicing law, he did not total and reconcile the individual client ledger balances for each trust account with the general ledger and the adjusted bank statement balances for that trust account at least quarterly because he was not actively using the accounts. Any remaining allegations or inferences contained in paragraph 6 are denied.

7. The allegations contained in paragraph 7 are admitted.
8. The allegations contained in paragraph 8 are admitted.
9. The allegations contained in paragraph 9 are admitted in part. It is admitted that Mr. Kirkbride can no longer identify the clients to whom the funds in Trust 1 and Trust 2 belong to because the records date back more than seven (7) years ago and before Mr. Kirkbride ceased the private practice of law on approximately January 1, 2007. Mr. Kirkbride no longer has those records. By way of further explanation, during the period Mr. Kirkbride was actively practicing law, he maintained client ledgers which identified each client whose funds were held in Trust 1 and Trust 2. To the best of his recollection, some or all of the funds remaining in Trust 1 and 2 resulted from checks written from the account that were never cashed. Any remaining allegations or inferences contained in paragraph 9 are denied.
10. The allegations contained in paragraph 10 are denied. By way of further explanation, Mr. Kirkbride did not make, or cause anyone to make, the online transfer of \$1,000. On or about July 6, 2011, Mr. Kirkbride's employee mistakenly made an on-line transfer of \$1,000 from Trust 2 to an account in the name of Chrysalis Consulting, Inc.

["Chrysalis"]. The employee was attempting to make an online transfer of \$1,000 from a non-trust account to the Chrysalis account, but instead, selected the wrong account, which resulted in the erroneous and unintentional transfer of the \$1,000 from Trust 2. By way of further answer, this mistaken and unintentional transfer was identified within a week and, at Mr. Kirkbride's direction, promptly corrected on July 13 by transferring \$1000 back to Trust 2 from the Chrysalis account.

11. The allegations contained in paragraph 11 are admitted.
12. The allegations contained in paragraph 12 are admitted but Mr. Kirkbride never had any intent, nor did he instruct his employee, to transfer the funds from Trust 2 to the Chrysalis account. As soon as the employee's mistake was discovered, \$1,000 was immediately transferred back to Trust 2 from the Chrysalis account.
13. The allegations contained in paragraph 13 are denied. It is specifically denied that Mr. Kirkbride ever intended to use these or any other trust funds for his own benefit. See the response to paragraph 10.
14. The allegations contained in paragraph 14 are denied. It is specifically denied that Mr. Kirkbride ever intended to take or use any entrusted funds for his own benefit. See the response to paragraph 10.
15. The allegations contained in paragraph 15 are admitted. See the response in paragraph 10.
16. The allegations contained in paragraph 16 are admitted in part. It is admitted that on or about July 28, 2011, Mr. Kirkbride signed a document where part of that document contained a marker, No. 11787085, in the amount of \$1,000.00 made payable to Aria. Mr. Kirkbride did not see the account number for Trust 1 on the marker and to the best

of his knowledge and belief, the trust account and routing numbers were not printed on the marker at the time he signed it. Upon information and belief, the casino adds account and routing numbers to a marker after it is signed and at the time it is presented to the bank for payment. At the time he signed the marker, Mr. Kirkbride never had any intention or expectation that the funds would be drafted from Trust 1. Mr. Kirkbride intended and expected that if any funds were used, it would be from one of his numerous operating or personal accounts at North State Bank. The remaining allegations and any inferences contained in paragraph 16 are denied.

17. The allegations contained in paragraph 17 are admitted in part. It is admitted that "Aria" is Aria Resort and Casino in Las Vegas, Nevada. By way of further explanation, the funds were unintentionally and mistakenly used to pay the casino. Also, see response to paragraph 16. The remaining allegations and any inferences contained in paragraph 17 are denied.

18. The allegations contained in paragraph 18 are admitted.

19. The allegations contained in paragraph 19 are admitted but Mr. Kirkbride never had any intent to use any entrusted funds for this purpose. Also, see response to paragraph 16. Any remaining allegations and inferences contained in paragraph 19 are denied.

20. The allegations contained in paragraph 20 are denied. It is specifically denied that Mr. Kirkbride ever intended to take or use any entrusted funds. See response to paragraph 16.

21. The allegations contained in paragraph 21 are admitted in part. It is admitted that on or about January 8, 2013, Mr. Kirkbride signed an authorization for MGM Grand Hotel and Casino and Mirage Hotel and Casino to obtain and verify the balance information

for Mr. Kirkbride's banking accounts. At the time Mr. Kirkbride signed the authorization, he did not know that some of the account numbers listed were for Trust 1 and Trust 2, as he had numerous personal and business accounts with North Bank. Any remaining allegations and inferences contained in paragraph 21 are denied.

22. The allegations contained in paragraph 22 are denied. By signing the authorization form, Mr. Kirkbride had the right to sign credit instruments but it did not bind him to do so.

23. The allegations contained in paragraph 23 of the Plaintiff's Complaint are admitted in part. It is admitted that Mr. Kirkbride signed the authorization form, consistent with the response in paragraph 21. At the time Mr. Kirkbride signed the authorization form, he did not realize the funds could be withdrawn from Trust 1 or Trust 2. Mr. Kirkbride acknowledges that he should have been more careful and determined which account numbers were listed on the authorization before signing it but unfortunately he did not do so. Fortunately, no entrusted funds from Trust 1 or Trust 2 were ever transferred pursuant to this authorization. Mr. Kirkbride has canceled and removed the trust account numbers from the authorization. The remaining allegations and any inferences contained in paragraph 23 are denied.

24. Paragraph 24 contains legal conclusions to which no response is required. However, to the extent a response is required, the allegations contained in paragraph 24 are denied. Mr. Kirkbride never had any intention to pledge or use any entrusted funds for his own personal use or benefit. See response to paragraph 21.

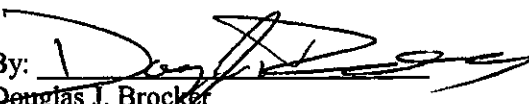
25. The allegations contained in paragraph 25 are admitted in part. It is admitted that Mr. Kirkbride did not exempt Trust 1 and Trust 2 from the accounts subject to the terms of

the authorization and did not notify the casino that the funds in Trust 1 and Trust 2 were entrusted funds. Mr. Kirkbride did not do either action because he did not realize the trust account numbers were included in the terms of the authorization. See response to paragraph 21. The remaining allegations and any inferences contained in paragraph 25 are denied.

The remaining statements or allegations in the unnumbered paragraphs of the complaint are legal conclusions and do not require any response or answer. Nonetheless, it is specifically denied that Mr. Kirkbride engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) or committed any criminal act, including embezzlement, that reflects adversely on his honesty, trustworthiness or fitness as a lawyer in violation of Rule 8.4(b).

This the 10 day of November, 2014.

THE BROCKER LAW FIRM, P.A.

By: 
Douglas J. Brocker
N.C. State Bar No. 22802
K. Brooke Ottesen
N.C. State Bar No. 44423
5540 Centerview Drive, Suite 200
Raleigh, North Carolina 27606
Telephone: (919) 424-6334
Counsel for Defendant

CERTIFICATE OF SERVICE

This is to certify that the undersigned this date served this document in the above-entitled action upon all parties to this cause by depositing a copy hereof, postage prepaid, in the U.S. Mail, properly addressed to:

Margaret Cloutier
Deputy Counsel
The North Carolina State Bar
Post Office Box 25908
Raleigh, NC 27611

This the 10 day of November, 2014.

THE BROCKER LAW FIRM, P.A.

By: 

Douglas J. Brocker

5540 Centerview Drive, Suite 200
Raleigh, North Carolina 27606
Telephone: (919) 424-6334
N.C. State Bar No. 22802